

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express & Priority Mail Contract 10
(MC2012-54)
Negotiated Service Agreement

Docket No. CP2012-66

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF AMENDMENT TO
PRIORITY MAIL EXPRESS & PRIORITY MAIL CONTRACT 10

(December 8, 2014)

I. INTRODUCTION

The Public Representative hereby provides comments pursuant to Order No. 2266.¹ In that Order, the Commission reopens the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice to amend Priority Mail Express & Priority Mail Contract 10.²

II. BACKGROUND

The Commission approved the original Express Mail & Priority Mail Contract 10 in Order No. 1499, dated October 11, 2012.³ In Order No. 1713, dated May 13, 2013, the Commission approved the proposed by the Postal Service name change of Express Mail to Priority Mail Express.⁴ Currently, the Postal Service filed the Notice that it has

¹ Notice and Order Concerning Amendment to Priority Mail Express & Priority Mail Contract 10 Negotiated Service Agreement, November 26, 2014 (Order No.2266).

² Notice of United States Postal Service of Amendment to Priority Mail Express & Priority Mail Contract 10, with Portions Filed Under Seal, November 25, 2014 (Notice).

³ Order Adding Express Mail & Priority Mail Contract 10 to the Competitive Product List, October 11, 2012 (Order No. 1499). See also: Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 10 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 27, 2012 (Request).

⁴ See Docket No. MC2013-45, Order Approving Minor Classification Change, May 13, 2013 (Order No. 1713). The proposed change became effective, as scheduled, on July 28, 2013. *Id* at 2 and <http://www.uspto.gov/web/offices/pac/mpep/s513.html>

agreed to amend the existing Priority Mail Express & Priority Mail Contract 10. In the Notice, the Postal Service asserts that the amendment “will not affect the cost coverage of Priority Mail Express & Priority Mail Contract 10” and, therefore, “the supporting financial documentation and financial certification initially provided in this docket remain applicable”. Notice at 1.

On December 2, 2014, the Chairman’s Information Request No. 1 was issued arguing that “[c]hanging circumstances for volume, rates and average weight could affect the contract’s projected financial performance” and, therefore, requesting the Postal Service to provide “the updated financial workpapers”.⁵ On December 5, 2014, the Postal Service provided the Response to CHIR No. 1.⁶

The Postal Service Notice includes a redacted version of the Amendment to the existing Priority Express Mail & Priority Mail Contract 10 (Amendment). Notice, Attachment A. The Postal Service also filed (under seal) the unredacted version of the Amendment. On December 5, 2014, with Response to CHIR No. 1, the Postal Service filed (under seal) the financial papers with the updated Priority Mail analysis.⁷ The Postal Service indicates that the Amendment “clarifies the definition of Customer and extends the contract expiration date”, while in “all other respects, the existing contract remains unchanged”. Notice at 2.

III. COMMENTS

Requirements of 39 U.S.C. § 3633. Pursuant to section 3633(a), prices for competitive products must cover each product’s attributable costs, not result in subsidization of competitive products by market dominant products, and ensure that all competitive products collectively contribute an appropriate share of the institutional

⁵ Chairman Information Request No. 1, December 2, 2014 at 1-2 (CHIR No. 1). As CHIR No. 1 states, the Commission has not been able to review contract’s financial performance for consistency with 3633(a), as part of its 2013 Annual Compliance Determination, because the Postal Service has not provided any financial data for the contract in its FY 2013 Annual Compliance Report (ACR). *Id* at 1.

⁶ Response of United States Postal Service to Chairman Information Request No. 1, with portions filed under seal, December 5, 2014 (Response to CHIR No.1).

⁷ The original workpapers, which were filed in Docket No. MC2012-54/CP2012-66 with the Request, also included “Express Mail analysis” (public file: ‘EM_Analysis.public.xls’) and “Summary analysis” (public file: ‘Summary.xls’). In the Response to CHIR No. 1, the Postal Service has not provided any updated versions for these workpapers.

costs of the Postal Service. The Public Representative has reviewed the financial worksheets provided by the Postal Service in the initial docket, the workpapers and documentation filed with the Notice and Response to CHIR No.1, as well as unredacted versions of the original Priority Mail Express & Priority Mail Contract 10 and the Amendment. Based upon that review, the Public Representative concludes that the contract should generate sufficient revenue to cover costs and satisfy the requirements of 39 U.S.C. § 3633(a) during the next second year of the contract.⁸

Amended Priority Mail Express & Priority Mail Contract 10 is expected to remain in effect for a period of five years from the effective date. Notice, Attachment A at 2. The original contract, which was approved by the Commission on October 11, 2012, was scheduled to expire three years from the effective date. Order No. 1499 at 5 and Request, Attachment B at 3. Consequently, the Amendment extends the contract expiration date by two years. The Postal Service's financial model does not demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the five-year period of the contract. Generally speaking, the mechanism of annual adjustment of prices included with the original contract (Request, Attachment B at 2) should help maintain the contract's ability to meet the requirements of 39 U.S.C. § 3633(a) during these years. However, the Public Representative has a concern described below.

The original contract terms, specified in Section I.C. and not modified by the Amendment, include separate volume requirements for Priority Mail Express and Priority Mail contract packages during the term of the contract. Request, Attachment B at 1. However, the updated financial papers illustrate the cost coverage for Priority Mail packages, and do not include any financial information related to Priority Mail Express packages. As the Postal Service explains in Response to CHIR No. 1, the provided financial information is related to the volumes shipped under the contract in FY 2014.

⁸ The original workpapers (filed under seal) showed that the Priority Mail Express & Priority Mail Contract 10 was expected to cover costs during its first year. However, as the Postal Service confirmed, this contract had no mail shipped in FY2013 and, as a result, no related revenue, weight or cost data reported in FY 2013 Annual Compliance Report (ACD). See, Docket No. ACR2013, Responses of the United States Postal Service to Questions 1-3b, 4-5, and 7-12 of Chairman's Information Request No. 5, February 11, 2014, Question 12. However, in Response to CHIR No. 1, the Postal Service indicates that in FY 2014, there was some volume shipped under the contract. Response to CHIR No. 1 at 1.

Response to CHIR No. 1 at 2. Based on the reviewed information, the Public Representative concludes that no Priority Mail Express packages were mailed in FY2013-FY2014. However, in order to comply with the contract terms, (Section I.C., Request, Attachment B at 1), the contract must satisfy the volume requirements - have certain number of Priority Mail Express customer packages shipped during the term of the contract. Since the Postal Service has not provided any updated financial worksheets related to Priority Mail Express packages, the Public Representative is unable to analyze (1) how the volume commitment will be fulfilled and (2) if Priority Mail Express & Priority Mail Contract 10 covers its costs in subsequent years and over the life of the contract. The Public Representative suggests that the Commission request the clarification regarding the Priority Mail Express packages to be shipped under the contract.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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